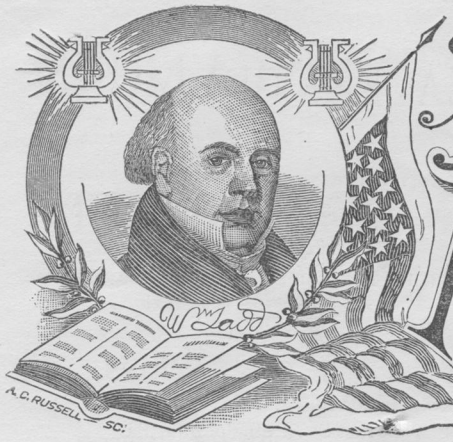

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CONTENTS.

JUDICIAL METHODS IN PLACE OF WAR.

BY DR. AUSTIN ABBOTT.

Address at the Mohonk Arbitration Conference, June 7, 1895.

Mr. Chairman, Ladies and Gentlemen,—I do not think we need enter into any verbal discussion; let us look at the things themselves. The solution of many controversies, — perhaps some international controversies, — may be aided by turning from contest on the phrases in which things have been couched and considering the things themselves. Two chief ways have been known among men of settling difficulties, otherwise than by coming to agreement. If you and I are disagreed upon our rights against each other, and we can agree contingently that Mr. Smiley shall tell us what to do and we will do what he says, that is arbitration. If, on the other hand, I evade you or you evade me, and I cannot get justice or a hearing, and if I think Mr. Smiley has power over everybody on this "reservation," and I appeal to him to compel you to come before him and hear my complaint, and make you do me justice,—then we have a court. In other words, one is voluntary and the other is in theory compulsory. The coon came down voluntarily, but he would not have come down voluntarily if Colonel Scott had not had his gun.

It is much the same principle between nations; but with a difference. Because, as the area expands, as the number of interests involved enlarge, and great societies are concerned, new forces come into play.

The great problem in international law thus far has been this, that there is no common authority above the nations, which can compel submission; and therefore it has been supposed that we cannot have anything but arbitration. As there is no common power superior to all nations to which we can appeal, many jurists have denied that the word "law" could be properly used in respect to international justice. Suggestions have been made that some federation of nations be created, which should have that common power; but these suggestions have not yet come into practical form, in the judgment of men of experience in national affairs.

To appreciate how serious is the task of substituting, in place of war, arbitration or judicial reasoning (whether it be by a court or what is commonly called arbitration), it must be remembered that it is a plan to take away power from one set of men and confer it upon another. It is a plan to take away the power of declaring war from the executive, and confer upon the judiciary the power of reasoning to conclusions which the executive must carry out. It is a revolution. But it is one of those revolutions that we see going on, though they take place slowly. English history shows some of these. It is not many generations ago since the order of things was "King, Lords, Commons." In the time of William Pitt, Moreton, chief-justice of Chester, in an argument in the House of Commons, desiring to impute some questionable sentiments to the prime minister, in speaking of "The King, Lords and Commons," added, "or as the right honorable gentleman opposite me would probably say, 'Commons, Lords and King.'" Pitt rose and stopped the discussion. He said: "I demand that the words be taken down. It makes my blood run cold to hear such sentiments,—Commons, Lords and King! It inverts the whole structure of the nation." The words were taken down and read before the speaker's desk. Moreton frightened, rose and